



Interstate Oil and Gas Compact Commission

Recent Developments in State Primacy

Legal and Regulatory Affairs Committee

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STATE PRIMACY

State Primacy: primary enforcement authority is delegated to a state (or other territory and/or tribe).

- Primacy grants a state enforcement power over what would otherwise fall under federal control.
- Oftentimes, states are better suited to enforce regulations within their borders.
- Delegation may also provide relief for certain federal programs.

Two focus areas of recent development with state primacy:

- EPA - UIC Program for Class VI wells; and
- *McGirt v. Oklahoma* at 140 S.Ct. 2452 (2020).

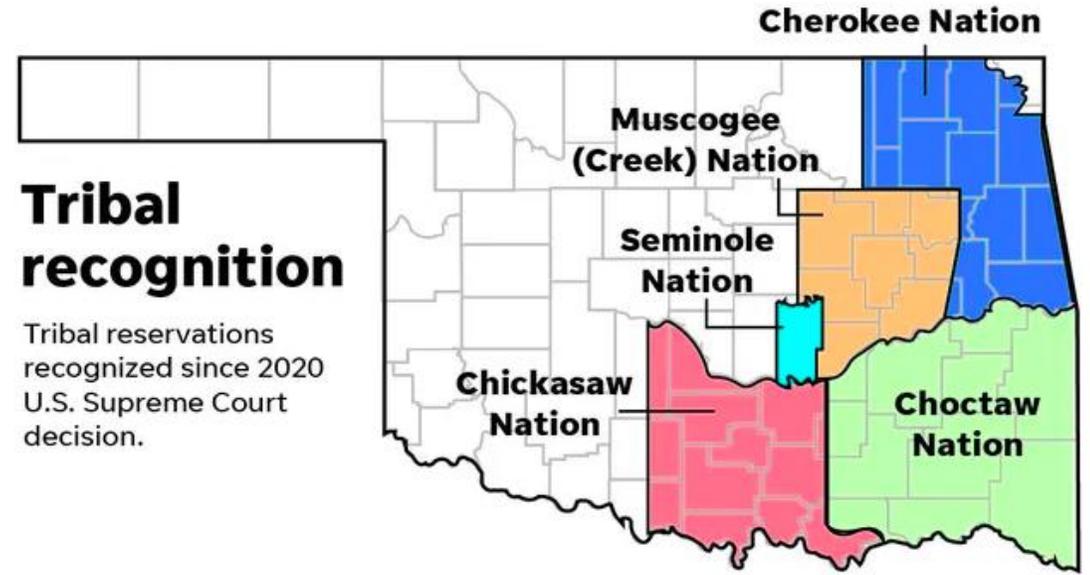
OKLAHOMA – PRIMACY

Brief case insight: originated as a criminal case which focused on the Major Crimes Act.

- Question of state vs. tribal/federal jurisdiction.

SCOTUS rendered the majority opinion such that its impact may have further reaching implications than just that of criminal proceedings.

Effect: the Muscogee (Creek), Cherokee, Chickasaw, Seminole, Choctaw and Quapaw Nations (NE) were formally recognized, and tribal/federal jurisdiction was confirmed for Eastern Oklahoma.



A map of Indian reservations in Oklahoma shows the jurisdiction of the Five Tribes: the Cherokee, Chickasaw, Choctaw, Muscogee and Seminole nations. *The Oklahoman*

McGirt v. Oklahoma at 140 S.Ct. 2452 (2020)

OKLAHOMA'S RESPONSE

In response to *McGirt*, Oklahoma triggered a 2005 federal highway bill to ensure that its state agencies would maintain and continue their enforcement authority as delegated to the state by and through the EPA.

Oklahoma acted to reinforce and secure continued regulatory primacy for the state agencies tasked with managing the state's resources – water, air, and land.

Additionally, Oklahoma's actions helped provide needed certainty for environmental regulations over eastern tribal lands under the *McGirt* ruling.

EPA AND UIC – STATE PRIMACY DELEGATION

State primacy is commonly focused on environmental regulation enforcement:

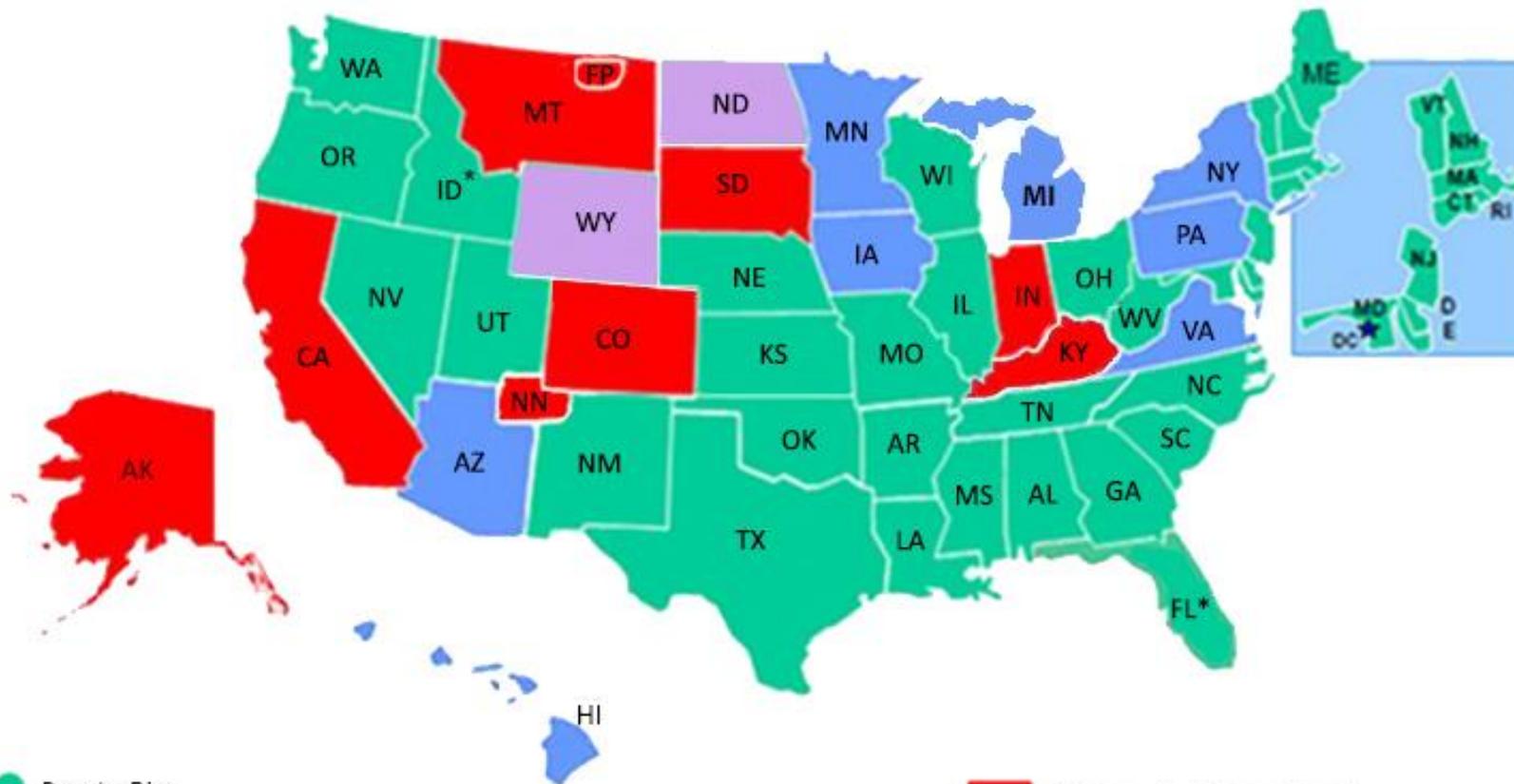
- States commonly seek primacy approval under the EPA's UIC program (internal state governance).

To be successful, states must show:

1. Jurisdiction over underground injection;
2. State regulations in place will meet federal requirements; and
3. Necessary enforcement penalty remedies are in place.

To date, 31 states and 3 territories have received primacy over Classes I-V wells.

- But only 2 states have received primacy approval for **Class VI wells**.



- Puerto Rico
- Virgin Islands
- American Samoa
- Indian Tribes, excluding class II for Navajo Nation (NN) and Fort Peck (FP)
- Commonwealth of Northern Mariana Islands
- Guam
- Primacy/well class II only
- Primacy/well classes I-V
- Primacy/well classes I-VI
- EPA implements well classes I-VI
- ★ EPA retains direct implementation authority for class II wells in Florida and Idaho

Map obtained from epa.gov

Class VI Wells

Class VI wells are utilized for carbon dioxide (CO₂) injection into deep rock formation for long term underground storage.

The EPA has developed extensive and tailored requirements for proper geologic sequestration for Class VI wells.

- The application and approval process for state primacy can be a sizeable undertaking (time consuming and requires attention to detail).

Class VI wells give us three areas of focus:

1. States that have already received primacy approval;
2. States that have started the process for primacy approval; and
3. States granting Class VI well permits *after* primacy approval.

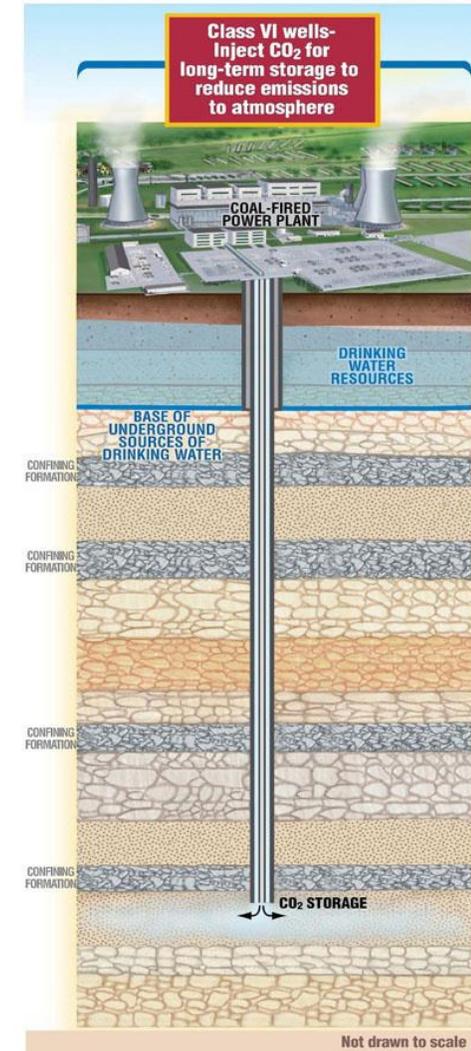
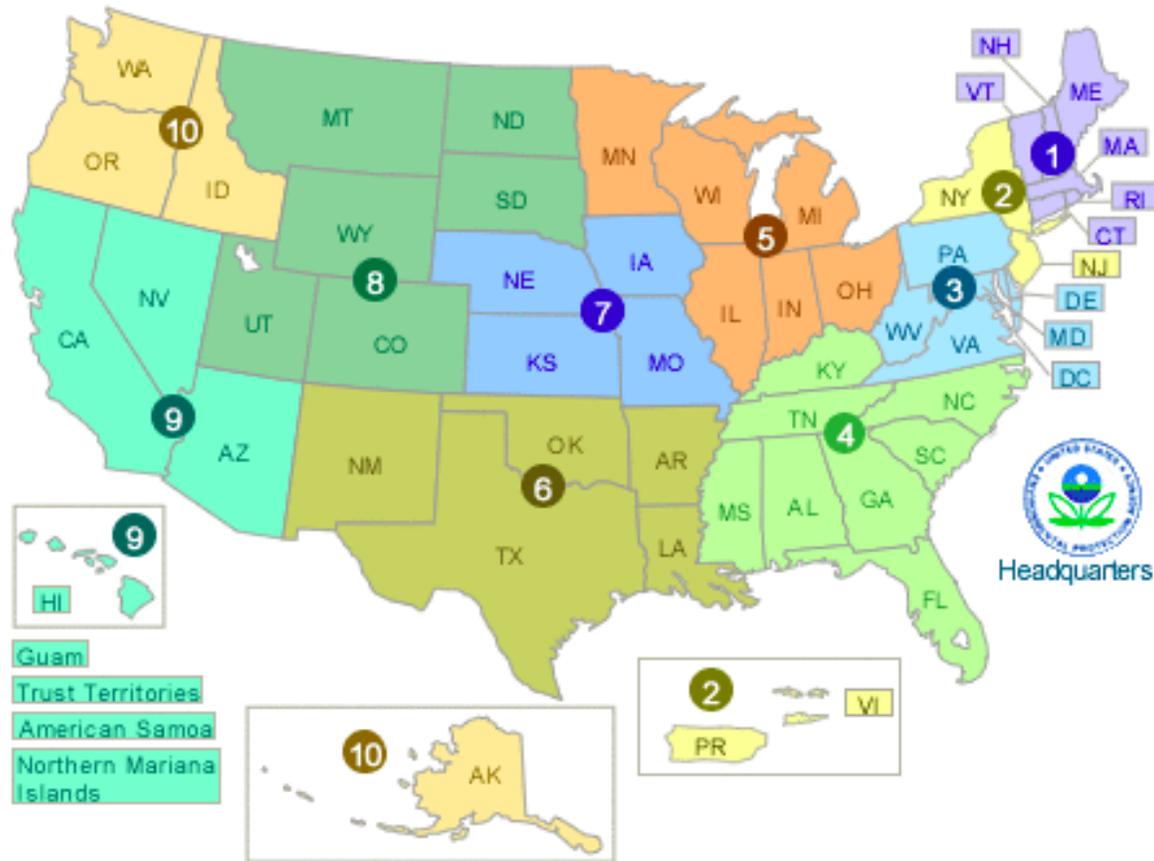


Image obtained from epa.gov



Map obtained from epa.gov

CLASS VI WELL PRIMACY

States with Class VI primacy:

- North Dakota and Wyoming
 - Both states are within Region 8
 - Both have gone through the full Class VI primacy approval with the EPA

North Dakota was the first state to receive approval from the EPA, followed by Wyoming

- Both states are examples of successfully achieving Class VI primacy.

CLASS VI WELL PRIMACY CONTINUED...

States to keep an eye on:

1. Louisiana (Region 6): application was last updated on May 13, 2021, and appears to be in the final stages for approval (Docket No. IMD-2021-02).
2. Texas (Region 6): actively pressing forward for Class VI primacy approval.
3. Arizona (Region 9) and West Virginia (Region 3) appear to be in the early application stages.

States with primacy AND granting permits on Class VI wells:

- In October 2021, North Dakota Industrial Commission approved its first Class VI well under state primacy.
- North Dakota is now the first state to achieve primacy of Class VI underground injection from the EPA.



THANK YOU!

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Annual Meetings – Santa Fe, New Mexico
November 2021